

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LONNY BRISTOW,	:	
	:	NO. 1:06-CV-871
Petitioner,	:	
	:	
v.	:	
	:	OPINION AND ORDER
	:	
EDWIN VOORHIES,	:	
	:	
Respondent.	:	
	:	

This matter is before the Court on the Magistrate Judge's February 28, 2007 Report and Recommendation (doc. 7). Petitioner filed no objection.

The Magistrate Judge reported that on January 9, 2007, the Court issued a Show Cause Order directing Petitioner to resubmit a habeas corpus petition that complied with the requirements set forth in Rule 2 of the Rules Governing Section 2254 Cases (Id.). Further, the Court notified Petitioner that failure to submit a petition in compliance would result in a recommendation that the petition be returned as insufficient pursuant to Rule 2(e) of the Rules Governing Section 2254 Cases and the instant case be dismissed without prejudice (Id.). Despite the Court Order, Petitioner has failed to resubmit the requisite petition for a writ of habeas corpus (Id.).

The Magistrate Judge recommends therefore that Petitioner's habeas corpus petition be returned to Petitioner as insufficient pursuant to Rule 2(e) of the Rules Governing Section

2254 Cases in the United States District Courts (Id.). He further recommends the instant case be dismissed without prejudice to Petitioner's refiling of a habeas corpus petition that complies with this opinion and the Rules Governing Section 2254 Cases (Id.). Next, the Magistrate Judge recommends that a certificate of appealability should not issue in this case, since "jurists of reason would not find it debatable as to whether this Court is correct in its procedural ruling" (Id.). Finally, the Magsitrate Judge recommends that the Court should certify pursuant to 28 U.S.C. § 1915(a) that an appeal of this Order would not be taken in "good faith," and therefore the Court should deny Petitioner leave to appeal in forma pauperis upon a showing of financial necessity (Id.).

Having reviewed this matter, the Court finds the Magistrate Judge's Report and Recommendation well-taken. By failing to resubmit a habeas corpus petition that complied with Rule 2(e) of the Rules Governing Section 2254 Cases, Petitioner failed to prosecute his claims. District courts have the inherent power to sua sponte dismiss civil actions for lack of prosecution in order to manage their affairs so as to achieve the orderly and expeditious disposition of cases. Link v. Wabash R.R., 370 U.S. 626, 630-31 (1962). Moreover, Petitioner's failure to reply to the Court's Order to Show Cause justifies dismissal pursuant to Fed. R. Civ. P. 41(b).

Accordingly, the Court ADOPTS IN ENTIRETY the Magistrate Judge's Report and Recommendation (doc. 7). The Court DIRECTS the Clerk to return the petition to Petitioner as insufficient pursuant to Rule 2(e) of the Rules Cases in the United States District Courts, 28 U.S.C. foll. § 2254, DISMISSES WITHOUT PREJUDICE Petitioner's case without prejudice to refiling a habeas corpus petition that complies with this opinion and the Section 2254 Rules, and FINDS that a Certificate of Appealability should not issue in this case, which the Court has concluded should be dismissed on a procedural ground, because "jurists of reason would not find it debatable as to whether this Court is correct in its procedural ruling" under the first prong of the applicable two-part standard enunciated in Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). Finally, the Court CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken in good faith, and therefore the Court DENIES Petitioner leave to appeal in forma pauperis upon a showing of financial necessity. Fed. R. App. 24(a), Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Dated: June 26, 2007

/s/ S. Arthur Spiegel

S. Arthur Spiegel
United States Senior District Judge